

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-TP-326
)	
Florida Cellular Service, LLC)	NAL/Acct. No.200232700023
Owner of Antenna Structure Number 1225706 in)	FRN 0004206637
Hobe Sound, Florida)	
Dallas, Texas)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: August 7, 2002

By the Enforcement Bureau, Tampa Office:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Florida Cellular Service, LLC, (“Florida Cellular”), owner of antenna structure number 1225706 in Hobe Sound, Florida, apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.51 of the Commission's Rules (“Rules”).¹ Specifically, we find Florida Cellular apparently liable for its failure to exhibit prescribed tower lights on its antenna structure.

II. BACKGROUND

2. On June 9, 2002, June 11, 2002, and June 13, 2002, agents from the FCC Enforcement Bureau, Tampa Field Office observed that antenna structure number 1225706 was not illuminated per its assigned painting and lighting specifications in that the top strobe light was extinguished on the antenna structure. On June 13, 2002, FCC agents contacted the Federal Aviation Administration (“FAA”) who confirmed that the required Notice to Airmen (“NOTAM”) had not been requested by the structure owner.

III. DISCUSSION

3. Section 17.51 requires that all high intensity and medium intensity obstruction lighting should be exhibited continuously unless otherwise specified. The antenna structure owner is responsible for maintaining the structure’s lighting.² In addition, the antenna structure owner shall report immediately to the FAA any known improper functioning of a structure’s top light or any flashing light.³ On June 9, 2002, June 11, 2002, and June 13, 2002, Florida Cellular failed to exhibit medium intensity obstruction lighting on its antenna structure number 1225706 in accordance with its registration requirements. The FAA had no report of a light outage on this structure.

¹ 47 C.F.R. § 17.51.

² See 47 C.F.R. § 17.6(a).

³ See 47 C.F.R. § 17.48(a).

4. Based on the evidence before us, we find Florida Cellular Service, LLC willfully⁴ and repeatedly⁵ violated Section 17.51 of the Rules by failing to exhibit tower lights on its antenna structure 1225706.

5. Pursuant to Section 1.80(b)(4) of the Rules,⁶ the base forfeiture amount for failure to exhibit obstruction lighting is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷ Considering the entire record and applying the factors listed above, this case warrants a \$10,000 forfeiture.

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁸ and Sections 0.111, 0.311 and 1.80 of the Rules,⁹ Florida Cellular Service, LLC is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.51 of the Rules by failing to exhibit obstruction lighting on structure 1225706 in Hobe Sound, Florida.

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, Florida Cellular Service, LLC, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the *NAL*/Acct. No. and FRN referenced above. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁵ The term “repeated,” when used with reference to the commission or omission of any act, “means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

⁶ 47 C.F.R. § 1.80(b)(4).

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80.

12th Street, S.W., Washington, D.C. 20554.¹⁰

9. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. IT IS FURTHER ORDERED THAT a copy of this *NAL* shall be sent by regular mail and Certified Mail Return Receipt Requested to Florida Cellular Service, LLC, 17330 Preston Road, Suite 100A, Dallas, TX 75252.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow
Tampa Office, Enforcement Bureau

¹⁰ See 47 C.F.R. § 1.1914.